

BILL ANALYSIS

Senate Research Center

S.B. 41
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State Affairs
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DIGEST AND PURPOSE

Current law permits an asbestos claim to enter the civil court system like any other civil claim. An estimated 20 percent of pending asbestos claims in the United States have been filed in Texas courts. Approximately 8,000 asbestos claims are filed annually in Texas. As proposed, S.B. 41 creates a new chapter in the Civil Practice and Remedies Code to regulate civil claims relating to asbestos exposure. The bill establishes medical criteria for a diagnosis of an asbestos-related disease, prohibits lawsuits failing to meet the criteria, and gives trial preference to claims involving malignant asbestos-related conditions.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 4, Civil Practice and Remedies Code, by adding Chapter 90, as follows:

CHAPTER 90. CLAIMS INVOLVING EXPOSURE TO ASBESTOS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 90.001. DEFINITIONS. Defines “asbestosis,” “certified B-reader,” “chest x-rays,” “claim,” “claimant,” “defendant,” “FEV1,” “FVC,” “ILO grade,” “ILO scale,” “mesothelioma,” “physician board-certified in internal medicine,” “physician board-certified in oncology,” “physician board-certified in pathology,” “Physician Board Certified in Pulmonary Medicine,” “Physician Board Certified in Radiology,” “Physician Board Certified in Occupational Medicine,” and “pulmonary function testing.”

Sec. 90.002. APPLICABILITY. Provides that this chapter applies to any claim alleging personal injury or death caused by exposure to asbestos fibers. Provides that no such claim shall arise from exposure alone in the absence of a diagnosis of asbestos related illness consistent with this chapter.

Sec. 90.003. STATE OR FEDERAL PROCEEDINGS. Provides that this chapter shall not be construed to diminish any substantive rights or obligations of any party to any proceeding in this state or outside this state, including proceedings in the courts of other states or the United States.

[Reserves Sections 90.004-90.020 for expansion.]

SUBCHAPTER B. FILING CLAIMS

Sec. 90.021. LIMITATIONS. Provides that the limitations period for any claimant failing to

meet the requirements of this chapter is tolled as to all responsible parties until such time as the claimant meets the requirements of this chapter. Requires that no statute of limitation or of repose governing claims under this chapter commence as a result of a purported diagnosis or finding of an asbestos-related disease that does not meet the criteria under this chapter. Provides that upon meeting the criteria of this chapter, the claimant's right to file suit shall be governed by Chapter 16 of this code.

Sec. 90.022. FILING A CLAIM; FILING FEE. (a) Requires a claimant seeking recovery of damages for personal injury or death caused by exposure to asbestos fibers to file a petition and information form containing certain information.

(b) Requires each claimant to pay the applicable filing fee.

(c) Prohibits a claim from being brought on behalf of a group or class of persons, and multiple claims from being joined unless each claimant files a complaint and information form and pays the applicable filing fee.

(d) Requires the trial court to dismiss a claim, upon motion of any party, if the complaint and information form are not accompanied by certain other documents.

Sec. 90.023. ADDITIONAL CLAIMS. Entitles a claimant who has pursued a claim under Subsection (D)(3) [the bill as drafted contains no indication as to what section this reference applies to] to pursue a separate and new claim for a condition that has progressed to a nonmalignant asbestos-related disease consistent with this chapter, with pulmonary function testing that demonstrates certain characteristics.

SECTION 2. Amends Subsection (a), Section 23.101, Government Code, to require the trial courts of this state to regularly and frequently set hearings and trials of pending matters, giving preference to hearings and trials of a claim or claims alleging personal injury caused by exposure to asbestos fibers if the basis for the claim is a diagnosis of mesothelioma or other malignancy allegedly caused by exposure to asbestos fibers.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: upon passage or November 1, 2003.